

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

FILED
U.S. DISTRICT COURT
INDIANA SOUTHERN DIVISION
09 MAY 13 PM 3:34
SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

Sabri Benkahla,

Plaintiff,

v.

Cause No. 2:09-cv-00025-WTL-DML

B.R. Jett; Paul McNulty;
Unknown Employees of the Correctional
Programs Division of the Federal Bureau of
Prisons; Les Smith; T.R. Henry; S. Julian;
T. Coleman; Agent Grass
Defendants.

**MEMORANDUM IN SUPPORT OF MOTION FOR EXTENSION
OR CLARIFICATION OF DEADLINE
FOR SERVICE OF COMPLAINT**

On May 7, 2009, this Court ordered Plaintiff Sabri Benkahla to file an amended complaint by June 11, 2009. *Benkahla v. Jett*, No. 2:09-cv-00025, Doc. No. 7. The instant motion seeks an extension of the deadline for service, in order to avoid service prior to amendment of the complaint on June 11, 2009.

A joint complaint was filed on January 13, 2009 by Plaintiffs Royer, Chapman, and Benkahla. *Royer v. Jett*, No. 2:09-cv-00011, Doc. No. 1. On January 21, 2009, the Court ordered the joint complaint to be processed as three separate actions. *Benkahla v. Jett*, No. 2:09-cv-00025, Doc. No. 2. As reflected on the docket, the individual action as to Mr. Benkahla was filed on January 21, 2009. A summons has not been issued.

Federal Rule of Civil Procedure 4(m) requires a complaint to be served within 120 days of filing. One hundred and twenty days from January 21, 2009 would be May 21, 2009 – before

the June 11, 2009 deadline for amending the complaint.¹ Although Mr. Benkahla has been proceeding *pro se* to date, undersigned counsel has moved for admission *pro hac vice* today and will file an amended complaint by the June 11, 2009 deadline. The amended complaint will narrow the claims, remove certain defendants and add others, and remove all individual-capacity claims. An extension would therefore avoid service of the original complaint on parties who ultimately will not be named.

An extension is also warranted because of the screening process. This Court has stated that, when filed, the amended complaint will be screened under 28 U.S.C. § 1915A. *Benkahla v. Jett*, No. 2:09-cv-00025, Doc. No. 7. “When the Court has not ordered service of process upon completing the preliminary screening mandated by 28 U.S.C. §§ 1915(e) and 1915A(a), the circumstances generally favor extending the time for service of process. In most instances, the screening process itself constitutes good cause to extend the time for service of process.” *Shabazz v. Franklin*, 380 F. Supp. 2d 793, 799-800 (N.D. Tex. 2005).

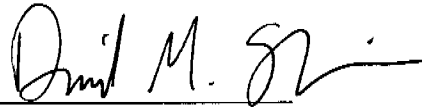
Accordingly, Plaintiffs respectfully request this Court to issue an order clarifying and/or extending the deadline for service, either by setting a date by which service must occur or by specifying a number of days following screening by which service must occur. In the event a

¹ In *Robinson v. America's Best Contacts and Eyeglasses*, 876 F.2d 596 (7th Cir. 1989), the Seventh Circuit held that the 120-day period for service of process commenced upon payment of the filing fee. In this case, the filing fee was received on May 1, 2009. While *Robinson* arguably applies here as well, the holding turned partly on the Local Rules of the United States District Court for the Northern District of Illinois.

particular date is fixed, Plaintiffs respectfully request a deadline no earlier than July 2, 2009, twenty-one days after the deadline fixed by the Court for filing the amended complaint.²

Dated: May 12, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David M. Shapiro", with a stylized flourish at the end.

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² Mr. Benkahla's *pro se* request for a 60-day extension of the period in which to file and serve an amended complaint was made the same day this Court ordered an amended complaint to be filed by June 11, 2009. Mr. Benkahla's motion is withdrawn to the extent it seeks time beyond June 11, 2009 to file an amended complaint. To the extent the earlier motion seeks an extension of the deadline for service, it is superseded by the instant motion.